IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 473 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TOXIC LINKS

Versus

M/S CHEMIE ORGANICS

Appearance:

1. Civil Revision Application No. 473 of 2001

MR RAJ PANJWANI SR. COUNSEL WITH MR BHUSAN B OZA for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

RULE SERVED for Respondent No. 2-3

RULE UNSERVED for Respondent No. 4

RULE NOT RECD BACK for Respondent No. 5-7

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 16/10/2002

CAV JUDGEMENT

1. The present revision application is filed against the order passed by the ld. Civil Judge (SD) Valsad on 31.7.2000 in an application below ex. 24 in Special Civil Suit No. 195 of 1997 whereby the application filed by the present petitioner/defendant no. 4 for dismissal of the suit for non compliance of the order dated 31.3.1999 passed by the ld. Civil Judge (SD) Valsad in an application under Order 6 Rule 5 of CPC seeking further and better particulars from the present respondents no. 1 to 3-ori. plaintiffs, is rejected.

2. The brief facts giving rise to the present revision application are as under:

3. That the respondent no. 4 in the present revision application who is the original defendant no. 1 had allegedly published a report in November 1996 Authored by Mr. Bob Edward and Dr.David Santillo on the chlorine Industry and its related pollution entitled "The Stranger". The respondent no. 1 being one of the firsts producing Chlorine etc. was mentioned in the said report. The respondent no. 1 was aggrieved by the following specific observations made in the said report:

> "Vapi is home to Chemie Organics described by Green Peace Scientist Dr. David Santillo, as possibly the worst piece of Chemical Plant I have ever, and will ever, set eyes on." He was unable to sample what appeared to be the main Effluent Channel because there were too many workers queing to wash themselves and their tools in it. However, as a sample of sludge from an open ditch on site revealed a host of highly toxic, persistent organochlorines apart from the ubiquitous chlorobenzines, the sludge also contained high levels of monoddi and trichlorobiphenyis (i.e. PCB) chlorinated terphengys and hexachloricyclohexans. The full list reads like a guide to the most dangerous organochlorines. Any responsible regulatory authority would shut down this plant immediately."

4. The respondent no. 1, therefore, filed a Special Civil Suit No. 195 of 1997 before the ld. Civil Judge (SD), Valsad for defamation and claimed the damages of Rs. 1,50,00,000/ against the defendants which, inter alia, includes defendant no. 4 that is present

petitioner.

5. The name of the present petitioner was referred to in para-2 of the plaint, wherein it is stated that the defendant no. 4 is one of the Contributors of the publication of articles in the"The Stranger" published by the defendant no. 1 in November, 1996, and is actively associated in publishing defamatory article. Since, in the opinion of the present petitioner, the plaint was lacking in material particulars, it filed an application under O.6 Rule 5 and sec. 151 of CPC seeking further and better particulars. The said application was opposed by the present respondents no. 1 to 3 and the court after hearing the parties, passed a detailed order on 31.3.99 directing the respondent to show what role the defendant no. 4 has played or contributed in defamation of plaintiff within one month from the date of the order.

6. The present respondents no. 1 to 3, pursuant to the said order, has furnished on 30.4.99 the following particulars:

> "(1) That the defendant no. 4 is shown on page-2 of the stranger as the place from where the copy of the "Stranger" containing the defamatory article will be available.
>
> (2) The defendant no. 4 is actively associated with other defendants in dissemination and distribution of "Stranger" from the beginning and has continued to do so even till today."

7. Again in the opinion of the present petition, the respondents no. 1 to 3 had not complied with the order dated 31.3.99, and hence, it filed another application under sec.151 of CPC dated 3.5.99 to dismiss the suit for noncompliance of the said order. The said application was opposed by the respondents no. 1 to 3. The ld. Civil Judge (SD) has passed an order on 31.7.2000 rejecting the said application filed by the present petitioner. The ld. Civil Judge (SD) has taken the view that if the cause of action is shown in the plaint and in other manner the Court can proceed with the matter then the court should not take last step to dismiss the suit. Considering the this guideline given in the case reported in AIR 1975, A.P. 8, the facts of the present suit and cause of action, the ld. Civil Judge (SD) had rejected the said application preferred by the present petitioner holding that the same is not maintainable.

8. It is, this order which is under challenge before this Court in the present revision application filed under sec. 115 of CPC. The main thirst of the petitioner's argument is that the ld. trial judge has failed to take into consideration the fact that the object of obtaining particulars is to enable the opposite party to know what case he has to meet and to prevent a surprise at the trial so that he may not have to go to trial embarrassed by the obscurity or the incompleteness of the case where he has to meet and he has further contended that in absence of these requisite materials and better particulars, the petitioner would suffer irreparable injury as it would have to contest the claim which may not lie against it. It is also contended that in absence of better particulars, serious prejudice would be caused to the petitioner as the petitioner does not know as to how it had contributed the publication of alleged defamatory article and as to how the petitioner was actively associated in publishing the alleged defamatory article. Lastly, it was contended that the ld. Civil Judge has committed jurisdictional error in not holding that in the absence of better particulars no cause of action has been disclosed in the plaint, and hence, the suit is required to be dismissed vis-a-vis the petitioner.

9. Heard Mr. Ram Panjwani learned Senior advocate and Mr. Bhusan Oza learned advocate appearing for the petitioner. Mr. Panjwani has submitted that plaint does not disclose any cause of action so far as petitioner is concerned. There is no involvement of the petitioner in the alleged defamatory publication and it is nowhere clearly mentioned as to how the petitioner is involved in the said defamatory publication. He has further submitted that so far as the suit for defamation is concerned, it is the preliminary duty of the plaintiff to disclose the cause of action and to give necessary particulars with regard to the time, place and persons before whom such defamatory statements are made or published. Such a suit cannot be filed merely on bald statements or vague allegations. The law of defamation requires that the statement which is made or published is a false one, defamatory, intends to cause injury to the reputation of other person and, there is no lawful justification for publishing such statement and it is communicated to others. If all these pre-conditions are satisfied than only the suit for defamation can lie against a person. So far as the petitioner is concerned, the petitioner has neither contributed nor involved itself in the alleged defamatory publication. No time is

mentioned or place is mentioned nor the name of person before whom the defamatory statement has been made by the petitioner is mentioned. Even the particulars to this effect called for by the petitioner and ordered by the ld. Civil Judge (SD), Valsad were not supplied by the present respondents no. 1 to 3 and hence non-supply of the said particulars amounts to non compliance of the order passed by the ld. Civil Judge (SD), Valsad and it would ultimately result into the dismissal of the suit. However, ld. trial judge has rejected the application moved by the petitioner ignoring the facts of the case as well as the authorities relied on by the petitioner, and hence, the present revision application is required to be filed and this Court should, therefore, while exercising its revisional jurisdiction under sec. 115 of CPC should reverse the order of ld. trial judge and direct him to dismiss the suit for non compliance of the order to furnish the necessary details and for lacking the cause of action in the plaint of the suit filed by the respondents no. 1 to 3.

10. With regard to maintainability of the present revision application in view of the amendment made in sec. 115 of CPC, Mr. Panjwani has submitted that the present revision application is saved by the proviso to sec. 115 of the CPC as if the application filed by the present petitioner would have been allowed by the ld. Civil Judge (SD), Valsad, the suit which is pending before the trial court would have come to an end so far as present petitioner is concerned. Even this Court while deciding this revision application, reverse the order of the ld. Civil Judge (SD) Valsad in that case also, the suit would come to an end qua the petitioner. It is, therefore, submitted by Mr. Panjwani that the present revision application is maintainable and it should be decided on merits of the matter.

11. With regard to the first contention of the petitioner that the suit filed by the plaintiff involving the petitioner as a tort feasor in committing a civil wrong, namely defamation, does not contain the requisite particulars. It is the duty of the plaintiff to state all material facts on which he relies for his case in the plaint. The object of particulars is to prevent surprise at the trial by informing the otherside about the case he is to meet and to defend thereon the issue to be tried and to save unnecessary expenses. It is also one of the important principles of law that the party who seeks particulars should seek then at the proper time and the best time to seek particulars is before the suit goes on trial. He has further submitted that in an action for

slander the plaintiff is supposed to give particulars of the names of person to whom the alleged slander was made. The plaintiff should also give particulars as to when and where the liable or slander as the case may be, was published, and the person to whom it was published. Since the plaintiff has not disclosed all these particulars in the plaint, the petitioner moved an application before the trial court requesting the court to direct the plaintiff to give the necessary particulars and as such the trial court has also passed an order to that effect. He has further submitted that the object of requiring the party to state particular in his pleading is two folds. The first, it is to inform the opponent of the nature of the case he has to meet as distinguished from the mode in which that case has to be proved, so that he may not be taken by surprise at the trial and he may be able to know what evidence he ought to be prepared with. He has further submitted that the despite the order passed by the trial court, the necessary particulars were not furnished by the plaintiff and thus, the plaintiff has violated the order passed by the trial court. He, therefore, submitted that the order to furnish the particulars is not obeyed. The sanction contained in Order 6, Rules 16 to 18 of CPC seems to be that the vague statement, particulars of which have been ordered and not furnished, may destroy the case of the plaintiff and the plaint may be rendered nugatory. In support of the above contention, Mr. Panjwani has relied on a decision of the Court of Appeal in the case of Marriott vs. Chamberlain, (1986) XVII Q.B.D. 154. In this case, in an action for libel the defendant pleaded that the libel was true. The substance of the libel was that the plaintiff had fabricated a story to the effect that a certain circular letter purporting to be signed by the defendant had been sent round to the defendant's competitors in business. The plaintiff had in speeches and letters stated that he had seen a copy of the alleged letter, that two of such letters were in existence in the possession respectively of a firm of bankers and a firm of manufacturers at Birmingham, and that his informant in the matter was a solicitor of high standing at Birmingham. In interrogatories administered by the defendant the plaintiff was asked to state the name and address of his informant, in whose hands he had seen the copy of the letter, and the names and addresses of the persons to whom the letter had been sent, and in whose possession the two letters existed; but he refused to do so on the ground that he intended to call those persons as his witnesses at the trial. On this fact, it was held that the defendant was entitled to discovery of the names and addresses of such persons as being a substantial part

of facts material to the case upon the issue on the plea of justification.

12. Mr. Panjwani has further relied on the decision of the Court of Appeal in the case of Wootton vs. Sievier, (1913) 3 Q.B.D., 499, wherein it is held that the following rules were established, namely, that where a defendant raises an imputation of misconduct against the plaintiff, the plaintiff ought to be enabled to go to trial with knowledge of the acts which it is alleged he has committed and upon which the defendant intends to rely as justifying the imputation; and that if the particulars are such as the defendant ought to give, he cannot refuse to do so merely on the ground that his answer will disclose the names of his witnesses. Applying these rules, the court held that the plaintiff was entitled to have particulars of the names of the persons with whom or through whom the defendants proposed to prove that he had made the bets to which they intended to refer, and the places or times at which such backings took place.

13. Mr. Panjwani has further relied on the decision in the case of Nannu Mal vs. Ram Prasad, reported in AIR 1926, Allahabad 672, wherein it is held that a plaint in a case of defamation ought to allege not only the publication, or set out not only the words, but that they were published or spoken to, at any rate, some named individuals at a particular time and place specified in the plaint. The Court found that the plaint was really too vague and might have been struck out on that ground. Mr. Panjwani has further relied on the decision in the case of Nedungadi Bank Ltd. vs. Official Assignee of Madras, reported in AIR 1930 Madras 473, wherein it is held that where a defendant after being ordered to give particulars by a certain time does not give the particulars within that time or within the extended time if there is an extension the Court has jurisdiction to strike out his defence even though such penalty is not explicitly added to the order directing particulars. The Court found that the discretion exercised by the original Court in striking out a defence, owing to the obstructive tactics of the defendant in not delivering particulars when ordered to do so, and in submitting inaccurate and incomplete particulars after considerable delay, is not improper and should not be interfered with in appeal. Mr. Panjwani has further relied on the decision in the case of Andhra Pradesh Wakf Board, Hydrabad vs. Alapati Mangamma and others, reported in AIR 1975 Andra Pradesh 8, wherein it is held that where on an application under O. 6 R. 5 of CPC, the Court passed an order directing

the plaintiff to furnish full particulars on or before a certain date and that, in default the suit should stand dismissed, and, on failure of the plaintiff to comply with the order, the suit was dismissed. The Court held that the Court which had ample jurisdiction to dismiss the suit committed no error in doing so.

14. With regard to the exercise of revisional jurisdiction under sec. 115 of CPC, Mr. Panjwani has relied on the decision of the Supreme Court in the case of M.L. Sethi vs. R.P. Kapur, reported in AIR 1972, SC 2379, wherein it is held that section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on these three matters it has no power to interfere because it differs from the conclusions of the subordinate court on question of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. An erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdictions of that court, cannot be corrected by the High Court under sec. 115 of CPC. The Court while explaining the dicta of the majority of the House of Lords, in the case of R.V. Bolton (1841) 1 QB 66, has held that the effect of the dicta in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. This comes perilously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal", "imposing an unwarranted condition" or "addressing themselves to a wrong question".

15. Lastly, Mr. Panjwani has relied on the decision of this court in the case of Kenny Bruno vs. Chemie Organics in Civil Revision Application No. 472 of 2001

rendered on 28.3.2002, wherein the Kenny Bruno was the defendant no. 5 in the Civil Suit No. 195 of 1997 in which the present petitioner is defendant no. 4. This Court has taken the view that the ld. trial judge has erred in not exercising the jurisdiction vested in him by not allowing the application under Order 1 Rule 10(2) of the Civil Procedure Code and, thereby violated the principles of natural justice. The Court has further held that if the sentence for which the defendant no.5 has been made party in the civil suit is perused, it is not sufficient to continue him as party-defendant in the suit. Along with the name of Mr. Bruno, there are 12 other names mentioned against the words "contributors". The other 11 persons are not joined as defendants and therefore it is difficult to come to the conclusion whether the defendant no. 5 is the author of the article in question for which the dispute is raised. The article in question refers to the name of David Santillo who is the party defendant no. 3 in the said suit and does not refer the name of the defendant no. 5. The court has, therefore, taken a view that the para was not contributed by the defendant no. 5 in the book by name "Stranger" and hence, the defendant no. 5 was ordered to be dropped from the array of the defendants in the Civil Suit No. 195 of 1997 and the civil revision application was allowed.

16. The moot question which arise in the present revision application is as to whether the suit filed by the plaintiff contains material facts, whether the order passed by the trial court directing the plaintiff to supply better particulars on an application moved by the present petitioner is complied with by the plaintiff and even on assumption that the said order is not complied with, whether the suit is liable to be dismissed. This is to be viewed in the context of the involvement of the present petitioner/defendant no. 4 in commission of the alleged civil wrong of defamation. As far as furnishing of particulars in the plaint is concerned, it is stated in the plaint that the defendant no. 4 is one of the contributors of the publication of the article in "The Stranger" published by the defendant no. 1 in November, 1996 and is actively associated in publishing defamatory article. It is further alleged in the plaint that the defendant published a report on the Chlorine Industry in India entitled as "The Stranger" in about November, 1996. In the said report on page 61, they have made the mention about Vapi Town and more particularly about plaintiff no. 1-firm. This extract from the report is reproduced in earlier part of this judgment.

17. The plaintiff has further alleged in the plaint that the statement contained in page 61 of the report is absolutely baseless, false, mischievous and is made with the sole intention to malign the reputation of the plaintiff firm and its partners. It has caused and is causing irreparable loss, harm and injury and damage to the reputation of the plaintiff firm and its partners in the eye of business associates, financial institutions, government authorities and public at large. The said defamatory statement is nothing but a figment of imagination. The plaint also contained the allegation to the effect that the defamatory statements made by the defendants have been also carried in sections of the Indian Press mentioning that there is high level of organochlorines found by the representative of defendant no. 1 in Indian Chemical Industry in general and particularly adverse comments made by the defendant no.1's representative in this regard for the plant of plaintiff no. 1. The plaint further contains an averment that the said report is published with malafides and malice and with the objective of conveying that the firm has indulged in the manufacturing operations of products which are toxic and lethal and do not care for the environment. The contents are highly defamatory which cast aspersions on the operation of the plaintiff firm. It is further stated that the letter dated March 3, 1997 from the President of Vapi Industries Association shows the effect of the article and prejudice against the plaintiffs injuring their reputation. The plaint also contains an averments to the effect that the cause of action for the present suit has arisen in November, 1996 when the impugned publication was published on June 5, 1997 when the defendant no. 2 by his letter reiterated and continued to defame the plaintiffs and on 26th June, 1997 when legal notice was served on the defendants and day to day thereafter.

18. As far as the petitioner's involvement in the said report is concerned, one will have to look at page-2 of the report which talks about the authors and acknowledgments. The author's name is mentioned as Bob Edwards with Dr. David Santillo. 12 names were mentioned as contributors and the report is shown to have been edited and designed by Rachel Kellet. After this, the petitioner's involvement is manifested. It is stated on this page that this report, the data referred to and further information on toxics issues in India can be obtained from Toxics Link. Thereafter, the address of Toxics Link is given. From this page, it becomes clear that the present petitioner's involvement is not akin to

the involvement of defendant no. 5 i.e. Kenny Bruno as he was merely shown as one of the contributors and other contributors were not made party in the suit. This may be one of the reasons for dropping the defendant no. 5 from the suit by order of this Court as referred to hereinabove. The petitioner's case is a different one as it is one of the main sources of getting the report, not only the report but the data referred to in the said report and also to get further information on toxics issue in India. This itself would indicate that the petitioner is providing the information and it is having all necessary datas as far as report is concerned. It works as an instrument of communicating the datas and information with regard to the report. Since the plaintiff has produced this material along with the suit pointing out the particular role played by the plaintiff in spreading out the datas and informations contained in the report and in making available the said report to the public at large, this cannot be said that the petitioner has no rule to play so far as the dispute raised in the suit is concerned. In this view of the matter, the decision of this Court and relied on by the petitioner is not rendered any assistance as it was decided altogether on the different set of facts.

19. As far as issue regarding necessary particulars to be disclosed in the plaint is concerned, the plaintiff has shown prima-facie involvement of the petitioner in making available report, the date referred in the said report and further information on toxics issue in India. If the petitioner is having the custody of the report, the data referred to in the said report as also further information with regard to that report, it is difficult to believe that he has wrongfully impleaded as party -defendant in the suit for defamation. With regard to further details to be provided by the plaintiff pursuant to the order passed by the Court, the plaintiff has furnished on 30.4.1999 the particulars which are also reproduced in the earlier part of this judgment. The plaintiff has made the pointed reference of page -2 of the said report and it was specifically mentioned therein that it is the place of the defendant no. 4 where the copy of "the Stranger" containing the defamatory article will be available. It is further stated that the defendant no. 4 is actively associated with the other defendant in defamation and distribution of "the Stranger" right from the beginning. After furnishing these details, the Court has not found it inadequate and the court has passed the order on application below ex. 24 on 31.7.2000 by holding that the cause of action is shown in the plaint and in other manner, if the court can

proceed with the matter then the court should not take the last step to dismiss the suit. While arriving at this conclusion, the court has rightly derived the support from the decision of Andhra Pradesh High Court in the case of Andhra Pradesh Wakf Board vs. Alapati Mangamma and Ors., (supra), wherein the Court has observed that the court has even got powers to dismiss the suit in the case of default of plaintiff to obey the order of the court, but the extreme step should not ordinarily be taken so long as the plaint discloses the cause of action which can be tried and adjudicated upon one way or the other on the allegations made therein. Even while directing the plaintiff to provide better particulars, the trial court has not observed that non compliance of the order would result into the dismissal of the suit. Mere omission of such direction would not lead to draw an inference that in case of non compliance of the order would result into the dismissal of the suit. Here in the present case, there is a compliance of the direction of the court. It may not be up to the expectation of the petitioner but that is not the relevant criteria. The court in the given set of facts and circumstances of the case has come to the prima-facie view that the details given or better particulars furnished and cause of action shown in the plaint would be sufficient to undergo the trial and such a view is taken by the court while exercising its jurisdiction vested under the law. It is not proper for this court to interfere in the said decision by holding that the trial court has not lawfully exercised its jurisdiction or it has committed any error of law or any jurisdictional error is committed. Even in the case of M.L. Sethi vs. R.P. Kapur (supra), the Supreme Court after discussing the case law on the subject has held that the trial court has jurisdiction to pass the order for dismissal of suit. Even if the lack of jurisdiction is assumed to result from every material error of law - even an error of law within the jurisdiction in the primitive sense of the terms, the order was vitiated by any error of law. The rejection of the application for time and the consequent dismissal of the suit for permission to sue in forma paueris can hardly be said to sound in jurisdictional error even in its extended sense as already explained. The court has further observed that the refusal to adjourn occasioned any failure of natural justice so as to render the order a nullity. The court has further held that nor is there anything to show that in rejecting the application for time court (acted) illegally or within material irregularity in the exercise of its jurisdiction. In the present case also, the part compliance of the order regarding furnishing of better

particulars had not occasioned in failure of natural justice so as to render the order nullity nor is there anything to show that in rejecting the application for dismissal of the suit for want of containing any cause of action qua the petitioner, the court acted illegally or with material irregularity in the exercise of its jurisdiction.

20. With regard to the other authorities cited and relied on by Mr. Panjwani,there is no dispute about the proposition laid down therein, however, the same are not relevant looking to the facts of the present case and looking to the view taken by the trial court as well as by this Court and hence, this Court does not think it proper to discuss these authorities in the context of the present petition.

21. Even without going into the aspect of maintainability of the present revision application in view of the amendment made in section 115 of the Code of Civil Procedure, this Court is of the view that no jurisdictional error or even an error of law has been committed by the trial court and looking to the nature and complexity of the suit for defamation and damages, the trial court has rightly taken a view that the same cannot be dismissed at the threshold without under going the trial. Having regard to the limited scope of revisional jurisdiction under sec. 115 of CPC, this Court confirms the order passed by the trial court and the present civil revision application is rejected. Rule is discharged with no order as to costs.

22. It is, however, observed that looking to the issue involved in the suit and looking to the petitioner's alleged involvement, the trial court is directed to hear and decide the suit as expeditiously as possible preferably within a period of six months from the date of receipt of the writ of this judgment or from the date of receipt of the certified copy of this judgment, whichever is earlier.

(K.A. PUJ, J.)
mandora/